IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1140 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THAKORE DASHRATHJI SHIVAJI & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR KG VAKHARIA SR.ADVOCATE WITH MR TUSHAR MEHTA for Appellant(s):1-3.
MR KT DAVE ADDL.PUBLIC PROSECUTOR for Respondent(s) : 1,
MR MM TIRMIZI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 12/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Instant Criminal Appeal under Section 374 of the Code of Criminal Procedure ('Code' for short) is directed against the judgment and order dated 7.12.1996 rendered in Sessions Case No.19 of 1996 by the learned Assistant Sessions Judge, Mehsana by which the appellants ('accused' for short) have been convicted for offences punishable under Sections 326, 325, 324 and 323 read with Section 114 of the Indian Penal Code ('IPC' for short) and sentenced to suffer R.I. ranging from 1 year to 8 years and also fine ranging from Rs.250/- to Rs.1,000/- and in default of payment of fine, R.I. ranging from one month to one year. All the accused have been sentenced as under:

Accused No.	Convicted under sections	Sentence imposed
Accused No.1	324 of IPC	R.I. for 3 years and fine of Rs.500/- i.d., R.I. for one year.
Accused Nos.2 & 3	326, 324 read with section 114 of IPC	R.I. for eight years and fine of Rs.1,000/- i.d., R.I. for one year.

Accused No.	Convicted under sections	Sentence imposed
Accused No.2	324 of IPC	R.I. for three years and fine of Rs.500/- i.d., R.I. for one year.
	326 of IPC	R.I. for eight years and fine of Rs.1,000/- i.d., R.I. for one year.
Accused Nos.1 & 3.	324, 326 read with section 114 of IPC	R.I. for eight years and fine of Rs.1,000/- i.d., R.I. for one year.
Accused No.3	323 of IPC	R.I. for one year and fine of Rs.250/- i.d., R.I. for one month.
	325 of IPC	R.I. for five years and fine of Rs.1,000/- i.d., R.I. for one year.
Accused Nos.1 & 2.	323, 325 read with 114 of IPC	R.I. for five years and fine of Rs.250/- i.d., R.I. for one year.

2. The prosecution case as disclosed from the FIR and unfolded during trial is as under:

2.1. P.W.2, Jawanji Pratapji, is residing with his family and children at Vadnagar and doing farming. He and his younger brother Chamanji owned approximately 12 bighas of land in Panch

area. They both are residing at Panch farm with their family and children. Ten years prior to the incident, he and his younger brother Chamanji purchased land admeasuring 10 bighas for consideration of Rs.11,000 from the accused and since then both the brothers are cultivating the said land.

2.2. On the day of previous Holi, A-1 came to his residence at the farm and told him and his brother to give him the land back and also spoke abusive words to them. The complainant and his brother told him that they have purchased the land ten years ago and, therefore, they will not give the land back. On hearing these words, A-1 quarrelled with the complainant and his brother and went away. Thus, there was enmity between the accused on the one hand and the complainant and his brother on the other. On the previous night at about 9.30 and 10 P.M., the complainant and his wife Rukhiben and his younger brother Chamanji and his wife Hajaben were sleeping after

their evening meal. During the night hours at about 2.30 and 3.00 A.M., A-1, A-2 and A-3 came screaming to their house and they woke up but before they could get up, A-1 gave blow to him twice on his head with scythe and A-2 gave blow to him with an axe and A-3 tried to give blow to him with a stick. As the complainant received injuries on his head, he fell down.

2.3. It is further case of the prosecution that during that time, Rukhiben, wife of P.W.2, Jawanji came there. A-2 gave stick blow on her left hand. Thereafter all the accused went running to the place where his younger brother Chamanji was sleeping. They beat him with scythe, axe and sticks on his head as a result of which serious injuries were caused on his head and on right shoulder. They also caused hurt on the head of Hajaben, wife of Chamanji with scythe. Thereafter the accused started screaming and went away with their weapons saying that on that day they escaped but they will furnish them when they

get a chance.

2.4. As per further case of the prosecution, thereafter Chanduji Mahotji and Chamanji Sovanji came there and took all the four injured and their mother Kuriben in a jeep to Visnagar Hospital for treatment. The doctor on duty gave them treatment but as Chamanji received serious injuries on head, all of them were transferred to Mehsana Civil Hospital. All of them were admitted in the Mehsana Civil Hospital as indoor patient and treated there.

2.5. As per the further case of the prosecution, the accused wanted to snatch away the land from the complainant and his brother which they purchased about ten years ago from the accused. As the complainant refused to give the land back, the accused keeping grudge inflicted serious injuries to the complainant and his family members with scythe, axe and stick with a view to kill them. The brother of the complainant

received very serious injuries on his head. The aforesaid incident took place at about 3 A.M. in the agricultural field of the complainant.

2.6. Complaint for the aforesaid incident was lodged at Vijapur Police Station by P.W.2, Jawanji which was recorded as narrated by him. Pursuant to the registration of the complaint, P.W.15, Vijaysinh Motisinh Vaghela, P.S.I. of Vadnagar, started investigation. During the course of the investigation, he received message that injured were taking treatment at Mehsana Civil Hospital, therefore, he went to Mehsana Civil Hospital and recorded complaint of P.W.2, Jawanji. He also recorded the statements of witnesses, drawn up panchnama of the scene of offence as well as recovered the mattresses found with blood stains. He thereafter arrested the accused and recovered the weapons used by them from them. He also recovered the clothes of the injured found with blood stains. Thereafter he obtained the injury certificates of the injured

persons. Ultimately, as sufficient incriminating evidence was found against the accused, they were charge-sheeted in the court of the learned JMFC, Vadnagar for commission of the offence punishable under Sections 307, 326, 325, 324 and 323 of IPC.

2.7. As the offence punishable under section 307 of IPC is exclusively triable by the court of Sessions, the learned JMFC, Vadnagar transferred the case to the Sessions Court, Mehsana.

2.8. The learned Assistant Sessions Judge, Mehsana, to whom the case was made over for trial, framed charge against the accused for commission of the offences punishable under Sections 307, 326, 325, 324 and 323 read section 114 of IPC. As the accused pleaded not guilty to the charge and claimed to be tried, they were put to trial in Sessions Case No. 19 of 1996 and tried by the learned Assistant sessions Judge.

2.9. To prove the culpability of the accused,

the prosecution has examined as many as 15 witnesses and relied upon their oral testimony, the details of which are given in paragraph 4 of the impugned judgment and order which are as under:

P.W. No.	Name	Status	Ex. No.
1.	Dr. Shakuntalaben Ashokkumar Joshi	Medical Officer	18
2.	Jawanji Pratapji	Complainant - injured	25
3.	Chamanji Pratapji	Injured	27
4.	Kuriben Pratapji	Injured	28
5.	Hajaben Chamanji	Injured	29
6.	Rukhiben Jawanji	Injured	30
7.	Mankaji Masotji	Panch witness	31
8.	Kamarali Aljibhai Charawala	Panch witness	33
9.	Bahelim Shaherhusain Badekhan	Panch witness	36
10.	Ramsinh Talaji	Panch witness	37
11.	Lavjibhai Raisingji	Panch witness	39
12.	Natwarsinh Umedsinh Zala	Police Jamadar who wrote down the complaint.	40
13.	Jahurali Badamiya Saiyed	Investigating Officer	41
14.	Dr. Bhagwandas Dahyalal	Medical Officer	46

P.W. No.	Name	Status	Ex. No.
15.	Vijaysinh Motisinh Vaghela	Investigating Officer	58.

2.10. To prove the charge levelled against the accused, the prosecution has also produced a number of documents and relied upon the contents thereof, details of which are narrated in paragraph 5 of the impugned judgment and order.

2.11. After recording of the evidence of the prosecution witnesses was over, the learned Assistant Sessions Judge explained to the accused the circumstances appearing against them in the evidence of the prosecution witnesses and recorded their further statement under Section 313 of the Code. In their further statement they denied the case of the prosecution and reiterated that false case has been filed against them. They also stated that on account of rivalry because of the dispute with regard to the land in question, ordinary quarrel took place and, therefore, they

have been wrongly roped in this case. They also filed complaint against the complainant Jawanji and his relatives. The said case is also pending before the court. However, the accused did not lead any evidence nor did they examine any witness in support of their defence.

2.12. On appreciation, evaluation, analysis and scrutiny of the evidence on record, the trail court has come to the conclusion that the prosecution has failed to prove the charge against the accused for commission of the offence punishable under Section 307 of IPC. However, from the evidence of the prosecution witnesses and more particularly injured witnesses, the prosecution has been able to successfully establish beyond reasonable doubt that the accused have committed offence of causing grievous hurt with sharp cutting instruments punishable under Sections 326 and 325 of IPC and also offences of causing simple hurts to the

injured witnesses punishable under Sections 324 and 323 of IPC and, therefore, the learned Judge of the trial court found that guilt of the accused for commission of the offences punishable under Sections 326, 325, 324 and 323 read with Section 114 of IPC is proved and accordingly he convicted them for commission of the said offences and sentenced them to suffer RI ranging from one year to eight years and fine ranging from Rs.250/- to Rs.1000/- i.d., further imprisonment for one month to one year, about which reference is made in earlier paragraph of this judgment, giving rise to the present appeal at the instance of the original accused.

3. Mr. K.G. Vakharia, learned Senior Advocate with Mr. Tushar Mehta, learned advocate for the accused, contended that the incident took place on the night between 16.6.1995 and 17.6.1995. According to him, it was an incident of free fight between the complainant's side and the

accused' side. It is highlighted by him that the presence of the accused at the scene of the incident was natural since they were residing at a distance of 100 ft. from the field of the complainant where the incidence occurred. It is also pointed out by him that the accused being agriculturists, it is but natural that they will be armed with dharia, axe or stick when they usually move in their field. It is also emphasized by him that A-1 received serious injuries of fracture of ulna and radius which prove that both the accused and the complainant injured each other on account of free fight which took place at the spur of the moment. It is also emphasized by him that the injuries on A-1, Dashrathji, has remained unexplained in view of the contradictions in the deposition of witnesses Jawanji, Chamanji, Kuriben, Hajaben and Rukhiben. According to him, Jawanji, in his examination in chief, has stated that Hajaben gave blow with dharia to Dashrathji. But in cross-examination he stated that his wife

Rukhiben gave blow to Dashrathji. Witness Chamanji stated that his wife Hajaben gave blow with dharia to Dashrathji. Witness Rukhiben stated that she had given stick blow to Dashrathji. Witnesses Kuriben and Hajaben are totally silent on this point. Therefore, the said inconsistency leads to one conclusion that the witnesses were deliberately suppressing the facts as to how the injury was caused to Dashrathji. Relying upon the aforesaid evidence, it is submitted by Mr. Vakharia that legal position is clear that if the injury upon the accused remains unexplained, the accused are required to be acquitted. He, therefore, submitted that the accused may be acquitted of the charges levelled against them and the appeal may be allowed.

3.1. In the alternative it is submitted by him that if the alleged incident, as narrated in the complaint, is accepted to be true, in that case also at the most accused can be held guilty for

commission of offences punishable under Sections 324 and 323 of IPC as the maximum period for which the injured persons remained in the hospital as indoor patient varies from 3 days to 25 days and all of them cured within a period of ten days. So, according to him, at the most, the accused can be convicted for commission of offences punishable under Sections 324 and 323 of IPC, and therefore, maximum punishment which can be imposed should not be more than six months.

3.2. In support of the aforesaid contentions, he relied upon the following judgments:

(i) Dharma Pal and others v. State of Punjab, 1993 Cr.LJ 2856.

(ii) Amrik Singh and others v. State of Punjab, 1993 Cr.LJ 2857.

(iii) State of Karnataka v. Siddegowda and another, 1995 Supp. (3) SCC 404.

(iv) Kanwarlal and Another v. State of M.P. (2002) 7 SCC 152.

(v) Surjit Singh v. Nahara Ram and another, (2004) 6 SCC 513.

(vi) Dashrath singh v. State of U.P., (2004) 7 SCC 408.

(vii) Mathai v. State of Kerala, (2005) 3 SCC 260.

(viii) Shailesh Jasvantbhai and another v. State of Gujarat and others, (2006) 2 SCC 359.

(ix) State of Gujarat v. Samaj alias Ismail Ahmed, 969 (X) GLR 1000.

3.3. In the aforesaid premises, it is contended by him that the impugned judgment and order qua conviction for offences punishable under Sections 325 and 326 of IPC deserves to be quashed and set aside by modifying it as conviction for offence punishable under sections 323 and 324 of IPC and at the most the accused

may be sentenced to suffer imprisonment not more than a period of six months. He, therefore, urged to allow the appeal by modifying the order of conviction and sentence.

4. In counter submission, Mr. K.T. Dave, learned APP, contended that it is not the case of a free fight between the accused and the complainant's side. The accused were the assailants as they had a grudge against the complainant as he refused to give the land back and, therefore, they armed with deadly weapons, came to the field of the complainant with an intention to cause them grievous injuries and they had in fact inflicted grievous injuries to the complainant as well as the members of his family as a result thereof they had taken treatment as an indoor patient for a period of about 25 days. According to him, there is no contradiction in the evidence of the prosecution witnesses. All the witnesses are consistent with regard to the incidence in

question as well as the injuries caused by each of the caused to each of the victim. They are also consistent with regard to which injury was attributed to which accused. Therefore, the judgment and order of conviction and sentence of the accused for commission of the offences punishable under Sections 326, 325, 324 and 323 of IPC does not call for any interference of this Court.

4.1. So far as the sentence imposed on the accused is concerned, according to him, looking to the grievous injuries caused by the accused, sentence of RI for eight years for commission of the offences punishable under Section 326 of IPC does not call for any interference of this Court. He, therefore, urged to dismiss the appeal by confirming the judgment and order of conviction and sentence passed by the learned Judge of the trial court.

5. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read an re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. This court has examined the entire evidence on record for itself independently of the learned Judge of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the learned Judge of the trial Court has rightly recorded the order of conviction and sentence.

6. At the outset, be it stated that there is no dispute with regard to the incident having taken place on 17.6.1996 in the early hours between 2.30 A.M. and 3.00 A.M., and the fact that the

field of the complainant and the accused are adjacent to the field of each other. It is also not in dispute that about ten years ago the complainant and his brother purchased the land admeasuring about 10 bighas from the accused and pursuant thereto they are in possession of the said land. According to the complainant, they have purchased the land from the accused whereas according to the accused, they have mortgaged the land with the complainant. Therefore, the dispute was going on between the accused and the complainant with regard to the land in question.

7. Now the question that arises for consideration of this Court is as to who were the aggressors or assailants first in point of time? There is no manner of doubt that as per the panchnama Ex.32, the incident took place on the agricultural field of the complainant. There is no question of wrong identification of the accused as both the parties know each other. A

perusal at the threadbare of the oral testimony of the witnesses i.e., P.W.2, Jawanji, Ex.25, P.W.3, Chamanji, Ex.27, P.W.4, Kuriben, Ex.28, P.W.5, Hajaben, Ex.29 and P.W.6 Rukhiben, Ex.30, it is seen that they are consistent with regard to the happening of the incident in question. They are also consistent with regard to the injuries sustained by them and as to who inflicted those injuries to them. A close scrutiny of the evidence of the witnesses it cannot be disputed that A-1 was armed with scythe, A-2 was armed with axe and A-3 was armed with stick. All the witnesses also gave accounts as to how many injuries were sustained by them, the weapons used by each of the accused. It may be noted that the weapons used by the accused are dangerous weapons. No doubt, it is true that those weapons are very much available with the farmers but that does not give them licence or permit to use for committing crime. Injuries inflicted by the accused were fracture or dislocation of bone. Therefore, it is clear that

the injuries inflicted by the accused fall within the definition of 'grievous hurt' with dangerous weapons which is punishable under Section 326 of IPC.

8. The prosecution has also relied upon the oral testimony of P.W.1, Dr. Shakuntalaben Ashokkumar Joshi, Ex.18. She was Medical Officer in General Hospital, Visnagar at the relevant time and she examined all the five injured as well as A-1. During her examination-in-chief, she narrated the injuries sustained by each one of the injured and she had also issued certificates which are on record at Ex.19, 20, 21, 22 and 23. A perusal of the injury certificates Exs. 19 to 23 and oral testimony of the medical officer Dr. Shakuntalaben Joshi, Ex.18, it is seen that each of the injured witnesses sustained fracture injury. Therefore, it has to be deduced that the offence committed by each of the accused falls within the definition of Section 326 of IPC for

causing grievous hurt to the complainant and his family members with dangerous weapons.

9. So far as injuries on the A-1 is concerned, a perusal of the evidence and oral testimony of P.W.2, original complainant, it is seen that he has admitted that A-1 has received injuries and that injuries were caused by Rukhiben as she saw A-1 giving blow to P.W.2. Therefore, according to this Court, injuries caused to A-1 is also explained by the prosecution and thus the genesis of the crime is not suppressed.

10. In light of the aforesaid evidence, according to this Court, it is not a case of free fight. The prosecution has been able to successfully explain the injuries caused to A-1 and thus the genesis of the crime is not suppressed by the prosecution. Therefore the prosecution has established the case against the accused beyond reasonable doubt for commission of

offence punishable under sections 326, 325, 324 and 323 read with Section 114 of the IPC.

11. This court has also considered the judgments of the Supreme Court as well as this Court cited at the bar by Mr. Vakharia, learned senior counsel for the accused. On perusal of the same, it is clear that they turn on their on facts and principles laid down therein do not apply to the facts of the instant case. Therefore, detailed reference to the same is avoided for the sake of brevity.

12. Seen in the above context, according to this Court, the prosecution has successfully established the complicity of the accused in commission of the offences punishable under sections 326, 325, 324 and 323 read with Section 114 of IPC. Therefore, the learned Judge of the trial Court has rightly reached to the conclusion that the guilt of the accused for commission of

the said offences is established and convicted all the accused for the said offences.

13. The learned Judge of the trial Court has imposed sentence to all the accused ranging from 1 year to 8 years and fine of Rs.250 to Rs.1000 and in default, RI ranging from one month to one year for commission of the offences publishable under Sections 326, 325, 324 and 323 read with Section 114 of IPC. Therefore, the question that now arises for consideration of this Court is as to whether the sentence of eight years imposed by the learned Judge of the trial court on each of the accused for commission of the offence under Section 326 and various sentences for commission of the offences under Sections 325, 324 and 323 is harsh or is it disproportionate to the guilt of the accused and whether the same is required to be modified by reducing the same or not?

14. In this connection, it is required to be appreciated that the alleged incident took place in the year 1995. More than 11 years have elapsed thereafter. Both the parties are residing in the adjacent fields. In spite of that and no untoward incident has taken place during this period of 11 years. So far as the disputed land is concerned, there is no civil litigation pending between them as reported by Mr. Vakharia, learned senior counsel for the accused. Looking to the nature of injuries, according to us, the sentence imposed by the learned Judge of the trial Court is disproportionate to the injuries sustained by the injured victims. Therefore, according to us, if the following sentence is awarded to each of the accused for commission of the offences under Sections 326, 325, 324 and 323 of IPC instead of the sentence awarded by the learned Judge of the trial Court, it would meet the ends of justice:

Conviction under Section	Sentence imposed
326 IPC	R.I. for 3 years and fine of Rs.1500/- i.d., RI for 3 months.

Conviction under Section	Sentence imposed
325 IPC	R.I. for 2 years and fine of Rs.1000/- i.d., RI for 2 months.
324 IPC	R.I. for 1 year and fine of Rs.500/- i.d., RI for 1 month.
323 IPC	R.I. for 6 months and fine of Rs.250/- i.d., R.I. for 15 days.

All the sentences are required to be ordered to run concurrently.

15. For the foregoing reasons, the appeal succeeds in part qua sentence only and accordingly it is allowed qua sentence only. While confirming and upholding the conviction recorded against the accused for commission of the offences punishable under Sections 326, 325, 324 and 323 read with Section 114 of IPC, we modify the sentence by reducing it as under:

Conviction under Section	Sentence imposed
326 IPC	R.I. for 3 years and fine of Rs.1500/- i.d., RI for 3 months.

Conviction under Section	Sentence imposed
325 IPC	R.I. for 2 years and fine of Rs.1000/- i.d., RI for 2 months.
324 IPC	R.I. for 1 year and fine of Rs.500/- i.d., RI for 1 month.
323 IPC	R.I. for 6 months and fine of Rs.250/- i.d., R.I. for 15 days.

All the sentences are ordered to run concurrently.

16. The accused are on bail. They are, therefore, directed to surrender to their bail bond before the Sessions Court, Mehsana on or before 9.1.2007, without fail, to serve out the sentence imposed by this Court, failing which the concerned Sessions Court, Mehsana, shall issue non-bailable warrant to procure the presence of the accused and send them to jail to serve out the sentence imposed by this Court.

With the above observations and directions, the appeal is disposed of by partly allowing it

qua sentence only as aforesaid.

(A.M. Kapadia, J.)

(K.A. Puj, J.)

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